there remains the question whether the stockholder really meant to represent to the third party all that the latter saw upon the back of the certificate. The fault in the whole situation is our practice of putting upon the back of a stock certificate a form which recites a sale and assignment with the power of transfer but without giving the party endorsing an opportunity to specify a limitation or special purpose for which the transfer may be made. The form should recite rather a transfer followed by the words "by way of" followed by a blank for the insertion of the word "sale" or "pledge" or "mortgage", as the case may be, and this portion of the form should then be followed by a power of attorney to the secretary of the corporation to enter the shares upon the books of the corporation according to the terms of the transfer. This second portion of the form suggested could commence with the words "with" and "without" in brackets, and the endorser could strike out one of the two, thereby giving or not giving the power of attorney as desired. If the latter form be thought too easy of unauthorized change, a blank space could be arranged instead of the brackets, and the words "with" or "without" printed below the line, so that the one desired could be written in on execution. Unless this is done by the corporation managers and advisers, the stockholder who is the one of two innocent parties, who now must suffer, will continue to suffer.

Under the form of transfer suggested, if the stockholder did not fill in the blanks and merely endorsed the certificate, the statement over the signature, on account of its uncertainty, would not be such as to mislead a third party who took from the first pledgee or other holder. This change would, it is admitted, hamper the freedom with which certificates of stock pass from hand to hand in the market, but since they are not recognized as negotiable for all purposes, the party transferring should be given a fair chance to express his real intention.

In the case under discussion the court considered at length the question of the good faith of the second pledgee. Dividends had been declared upon the stock and paid over to the pledgor without coming to the notice of the second pledgee and without any inquiry by it concerning them. It seems to be settled in this state, that, where shares of stock in a corporation are pledged, the pledgee is entitled to the dividends and may collect them if he can, but he is under no duty to do so or to use them as part of his security.[5] M. C. L.

DECEIT: FALSE REPRESENTATIONS.—The essential elements necessary to constitute actionable fraud and deceit are: (1) a material representation by the defendant concerning a past or existing

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[5] McAulay v. Moody (1900), 128 Cal. 202, 60 Pac. 778; Cal. Civ. Code, § 2989.

fact,[1] (2) which is false in point of fact,[2] (3) which was known by the defendant to be false or made by him as a positive assertion with reckless disregard whether it was true or false,[3] (4) which actually misled the plaintiff,[4] and (5) which resulted in damage to the plaintiff.[5]

A novel case in Washington, *Raser v. Moomaw*,[6] seems to contain all the above-named essentials for liability for fraud. The plaintiff was a real estate broker, and the defendant, to induce the plaintiff to secure a loan, introduced to him a woman represented to be K, the owner of a certain lot. The woman was not K, but was an imposter, which fact the defendant either knew or by proper diligence might have ascertained. The plaintiff relied upon the representations, was actually misled thereby, secured a loan from a client, and was compelled to pay the client the amount thereof. The lower court gave judgment for the defendant, which was reversed in the upper court.

As we read this case we are surprised to find that it has no exact precedents in the books. We would have thought similar situations would have been adjudicated in the courts, for it must be no very unusual thing for real estate agents to be led into such mistakes. The decision seems to us sound, and, if sound, it is a warning to real estate agents to be exceptionally careful in their daily transactions, where pecuniary liabilty may attach. The case most nearly like it is one that arose in Colorado.[7] There the plaintiff in error had falsely identified to the bank the holder of a certificate calling for the payment of money as the person who was named in the certificate. Relying upon those representations the bank paid the money to the holder of the certificate. The person who made the false identification was held liable to the bank.

W. C. J.

EQUITY: GIVING OF BOND BY PUBLIC UTILITY ON ISSUING OF PRELIMINARY INJUNCTION TO RESTRAIN ENFORCEMENT OF RATES. —When a preliminary or interlocutory injunction issues at the

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[1] Milliken v. Thorndike (1869), 103 Mass. 382; Nounnan v. Sutter County Land Co. (1889), 81 Cal. 1, 22 Pac. 515.

[2] Smith v. Chadwick (1884), 9 App. Cas. 187; Lester v. Mahan (1854), 25 Ala. 445.

[3] Toner v. Meussdorffer (1899), 123 Cal. 462, 56 Pac. 39; Mayer v. Salazar (1890), 84 Cal. 646, 24 Pac. 597. Of course, the leading modern English authority on the subject of deceit, Derry v. Peek (1889), 14 App. Cas. 337, laid down the proposition that there can be no liability for fraud, where the person making the representation in good faith believes it to be true. While some American decisions favor this view, the weight of American authority is as stated in the text.

[4] Nounnan v. Sutter County Land Co. (1889), 81 Cal. 1, 22 Pac. 515.

[5] Hicks v. Deemer (1900), 187 Ill. 164, 58 N. E. 252.

[6] (March 26, 1914), 139 Pac. 622.

[7] Lahay v. City Nat'l Bank of Denver (1891), 15 Colo. 339, 25 Pac. 704.